

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3500 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MELODY DRIVE-IN-CINEMA

Versus

COMMISSIONER OF ENTERTAINMENT TAX

Appearance:

MR JR NANAVATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/10/2000

ORAL JUDGEMENT

The petitioner who is running a Cinema House, has been directed to pay the entertainment tax, though his Cinema House was closed during the relevant period. He has, therefore, filed this petition for issuance of a Writ of Mandamus or any other appropriate Writ quashing

and setting aside the order dtd. 28th March, 1992 (Annexure-C) passed by the respondent NO.1, and the order dtd. 14th June, 1990 (Annexure-B) passed by the respondent NO.2 as well as the letter dtd. 15/1/1990 (Annexure-A) written by the respondent NO.3 qua levy of entertainment tax.

2. The facts giving rise to the petition may, in brief, be stated. The petitioner is a registered partnership firm. It runs the Cinema House called "Melody Drive-in-Cinema" within the local limits of Village Vijadi-Virda in Rajkot District. The opponents levy the entertainment tax under the Gujarat Entertainment Tax Act, 1977 (for short "the Act"). The same is leviable for admission to the entertainment as per Sec. 3 of the Act. Sec. 6 of the Act provides for consolidated payment of tax. If consolidated payment of tax is permitted, the same has to be paid every week commencing from Friday and ending with Thursday. The Gujarat Entertainment Tax Rules 1979 (For short "the Rules") framed under the Act provides that the application under Sec.6(3) is to be made in Form No.2(A) and the permission is to be granted under Sub-Sec.4 of Sec.6 of the Act and that should in the Form No.2(B). If the weekly payment of tax is permitted i.e. consolidated payment of tax, the same has to be paid regardless of the number of the shows exhibited during the week. But if during the week, no show could be displayed, and for the whole of the week the Cinema House remained totally closed, it would not be just and proper on the part of the authority to levy the tax. Because of the monsoon, the petitioner could not run the Cinema House from 28th July, 1989 to 10th August, 1989, and during the Winter from 1st December, 1989 to 22nd March, 1990. For this period as no show could be exhibited, the petitioner was not liable to pay the tax. Relating to this period, advance intimation was also given. However, the Mamlatdar for the Rajkot District writing the letter on 25th January, 1990 called upon the petitioner to pay the amount of entertainment tax. The petitioner against such demand, preferred an appeal before the Collector, Rajkot District, who on 14th June, 1990 dismissed the same holding that those who had obtained the benefits of consolidated payment of tax, were not entitled to the benefit of not paying the tax as per the policy adopted by the State. The petitioner then, carried the matter in Revision before the Entertainment Commissioner, Gandhinagar, who on 28th March, 1991 dismissed the revision holding that regardless of the fact whether he exhibits the show or not, the Cinema House owner who has adopted the advantage of consolidated payment tax policy,

is not absolved from payment of tax. Against such order, the present petition is filed calling in question the legality and validity of the above said three orders.

3. Whether the petitioner who has been permitted to pay the tax as consolidated tax under the consolidated payment tax scheme, is entitled to immunity from paying the tax relating to the period during which the Cinema House remained totally closed without even exhibiting a single show, is the point that now arises for consideration. As per Sec. 3 of the Act, the tax is levied for admission to the entertainment. Vide Sec.6, the State is vested with the power to compound the tax payable in respect of the entertainment for a fixed sum, irrespective of the provisions of Sec.3. So the proprietor of the Cinema House in a specified area is given an option regarding payment of tax at the rate specified in Sub-Sec.5 of Sec.6. It is not disputed before me that the petitioner who is a proprietor of the Cinema House has been given the benefit to pay the entertainment tax under the consolidated payment scheme. Under Sec.8, every proprietor of the Cinema House has to furnish the Return relating to the payment for the complementary tickets issued relating to the particular period in the prescribed form. As per Rule 5(A) of the Rules, the application under Sec.6(3) has to be made in Form No.2(A) and as per the Rule 5(B) of the Rules, permission is to be granted under Sec.6(4) of the Act in Form No.2(B). As per Clause 5 of Form No.2(B), the proprietor of Cinema House has to intimate to the concerned officer in advance at least before 7 days qua every proposed change or variation in the gross tax collection capacity of the Cinema by virtue of any modification or revision of the tax of the rates of admission or any change in accommodation or Classes of accommodation. If the Cinema House is to remain close because of certain circumstances, the proprietor has to intimate 7 days in advance to the concerned, so that for the purpose of the levy of the tax, amounts thereof can be calculated accordingly. A combined reading of all the provisions shows that if the tax is compounded and is made payable weekly and any concession is sought by the proprietor of the Cinema House because of his inability to exhibit the show for the whole of the week, he has to intimate the concerned officer at least a week before and if that is done, the authority levying the tax, has to deduct the amount of that period during which the Cinema House remained closed from the amount found due. There is nothing in the above said provisions that the proprietor of the Cinema House is not entitled to such benefit, if he has taken benefit of consolidated payment

of tax scheme, as provided in Sec.6 of the Act. The authorities rejecting the prayer of the petitioner on this ground has certainly fallen into error in interpreting the provisions and calculating the entertainment tax amounting to colourable exercise of power, making the order arbitrary.

4. On another count also, the order passed can be termed arbitrary. From time to time Circulars were being issued by the Government directing and elucidating how the tax was to be levied and in what circumstances concession was to be granted. In this regard a Circular dtd. 21st April, 1992 was issued clarifying that the proprietor of the Cinema House could be liable to pay lump-sum tax under Sec.6(2) of the Act. As per that Circular, it is made clear that if the proprietors of the Cinema House are not in a position to exhibit any show because of the exigency mentioned therein, they are in that case immuned from making payment relating to that period of closure of the Cinema House. If often electricity is withdrawn or the projector goes out of order, or because of the rainy season or such other circumstances, if no show can be exhibited, the tax collecting authorities are advised to see that the tax relating to that period during which the Cinema House remained closed, may not be levied. Thereafter, another Circular dtd. 15th April, 1993 (Annexure-D) is also issued by the Government directing when the consolidated tax is not be levied. It indicates that if the proprietor is not in a position to exhibit the show because of unforeseen circumstances or natural calamity or riots, the concession in the tax has to be granted. While issuing this last Circular on 15th April, 1993, the above referred Circular dtd. 21st April, 1992 is not withdrawn. It seems it is kept in force. When that is so, the contention of the learned A.G.P. that the petitioner could be granted concession only in the cases of natural calamities or unforeseen circumstances or riots, can not be accepted. The Circular dtd. 21st April, 1992 categorically provides that if the Cinema House cannot be run because of the rainy season etc., the proprietor is entitled to concession provided intimation in that regard is given at least a week in advance. In the case on hand, the petitioner had given intimation a week in advance and brought it to the notice of the tax collecting authority that because of the Monsoon, it would not be possible to exhibits the show from 28th July, 1989 to 10th August, 1989, and again intimation was given indicating that because of Winter, it would not be possible to run the Cinema House from 1st December, 1989 to 22nd March, 1990. Accordingly the Cinema House

remained closed and during that period, not a single show was exhibited.

5. Whether the petitioner is entitled to the benefit, he is seeking, is the point that now arises for consideration. The learned Advocate for the petitioner relies much on the Circular dtd. 21st April, 1992. Of course, during the period in question the concession is sought, the Circular was not at all issued and therefore the authorities had no guidelines on hand to interpret the aforesaid provisions. The plain reading of those provisions, abundantly makes it clear that if the proprietor of the Cinema House is not in a position because of the circumstances beyond his control to run his Cinema House for at least a week, he is entitled to concession for that week period. If he exhibits even a single show during that week period, he loses the benefit available in law. The authorities have, therefore, misinterpreting the provisions of the law, rejected the application of the petitioner, which can be termed arbitrary. Later on, when the Circular referred to hereinabove was available, the authorities have granted concession to the petitioner passing appropriate order on 1st November, 1994, copy of which is produced at page 27. At this stage, a decision of this Court rendered in the case of Shrirang Touring Talkies through its proprietor Manharbhai M. Patel vs. State of Gujarat and ors. 36(1) [1995 (1)] GLR 171, is shown wherein it is observed regarding the Circular dtd. 21st April, 1992, that if the Cinema House owner is unable to run his shows for the whole week from Friday to Thursday is not required to pay the tax provided during the whole of the week from Friday to Thursday, not a single show could be exhibited. The Circular was made applicable with retrospective effect. However, in that case a demand of the entertainment tax was made considering the above stated provisions and the Circulars. In that case the petition was allowed and the order demanding the tax was quashed and set aside and the matter was remanded to the concerned authority for afresh decision in accordance with law after giving reasonable opportunity to the petitioner in that case.

6. In the case on hand when unjust demand is made and the recovery orders are passed, the same are liable to be quashed and set aside. For the aforesaid reasons the Revisional Authority is required to consider afresh the revision application bearing in mind the aforesaid provisions as well as the Circular and then pass appropriate order giving reasonable opportunity to the petitioner to submit his say.

7. In the result, the application is allowed. The order passed by the Entertainment Commissioner in Revision on 28/3/1991 is hereby quashed and set aside. The matter is referred back to the Commissioner for entertainment who shall restore the Revision to file and granting reasonable opportunities to the petitioner as well as considering the aforesaid provisions and Circulars, pass appropriate order qua levy of entertainment tax. Rule accordingly made absolute.

(H.R. SHELAT, J.)

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